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FEB 26 2009

OFFICE OF PETITIONS

In re Application of :
Gregor K. Frey et al :
Application No. 10/748,951 : DECISION GRANTING PETITION
Filed: December 30, 2003 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 6570P046 :
:

This is a decision on the petition under 37 CFR 1.313(c)(2), filed February 23, 2009, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See 37 CFR 1.313(c)(2).*

*Petitioner is advised that the issue fee paid on December 1, 2008 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.*¹

The request for refund of the petition fee paid on December 1, 2008, is dismissed because the petition to revive under 37 CFR 1.137(b) was granted on January 12, 2009.

MPEP 711.03(c) states that:

[T]he petition fee is required for the filing (and not merely the grant) of a petition under 37 CFR 1.137. See H.R. Rep. No. 542, 97th Cong. 2d Sess. 6 (1982), reprinted in 1982 U.S.C.C.A.N. 770 (“[t]he fees set forth in this section are due on filing the petition”). Therefore, the Office: (A) will not refund the petition fee required by 37 CFR 1.17(1) or 1.17(m), regardless of whether the petition under 37 CFR 1.137 is dismissed or denied; and (B) will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.

¹ *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 2451 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

/Karen Creasy/
Karen Creasy
Petitions Examiner
Office of Petitions